United Nations S/2016/794

Security Council

Distr.: General
19 September 2016

Original: English

Letter dated 13 September 2016 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to article 13 quinquies of the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 concerning the appointment of an ad hoc judge of the Tribunal.

Article 13 quinquies provides the following:

> If there is no permanent judge currently serving at the International Tribunal available for assignment to the Appeals Chamber, and all practical alternatives having been explored, the Secretary-General may, at the request of the President of the International Tribunal and after consultation with the President of the Security Council, appoint a former judge of the International Tribunal or of the International Criminal Tribunal for Rwanda who is also a judge of the International Residual Mechanism for Criminal Tribunals, as a judge of the International Tribunal, to be assigned on an ad hoc and temporary basis to the Appeals Chamber, notwithstanding article 12, paragraph 3, and article 14, paragraph 3, of the Statute. The terms and conditions of service of a judge appointed pursuant to this paragraph for each day on which he or she exercises functions for the Appeals Chamber shall be those of a judge ad hoc of the International Court of Justice.

By a letter dated 7 September 2016, the President of the Tribunal, Judge Carmel Agius, requested that Judge Burton Hall (Bahamas) should be appointed as a judge of the Tribunal pursuant to article 13 quinquies, so that he might be assigned to interlocutory appeals from the *Mladić* trial on an ad hoc and temporary basis (see annex).

Judge Hall is a former permanent judge of the Tribunal and the presiding judge in the *Stanišić and Simatović* case before the International Residual Mechanism for Criminal Tribunals. He would serve in the Tribunal and the Mechanism simultaneously, consistent with article 7 of the transitional arrangements set out in annex 2 to Security Council resolution 1966 (2010), which allows a judge of the Tribunal to hold the office of judge of the Mechanism.

Article 12 (3) of the statute of the Tribunal provides that the Appeals Chamber shall, for each appeal, be composed of five of its members. In the absence of a new judge, it would not be possible for the Tribunal to compose an appellate bench of five appellate judges for any interlocutory appeals that may be filed in the *Mladić*

Please recycle

trial. This is because there are only seven permanent judges remaining at the Tribunal, of whom three are assigned to that trial.

I note that the President of the Mechanism has been consulted on this matter and that he agrees with the request.

In accordance with article 13 quinquies of the statute of the Tribunal, I look forward to receiving your views on the appointment of Judge Burton Hall as a judge of the Tribunal, to be assigned to the Appeals Chamber on an ad hoc and temporary basis.

(*Signed*) BAN Ki-moon

Annex

I have the honour to address you once more in relation to the composition of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

First of all, I wish to express my gratitude for the prompt action of the Security Council in addressing the request contained in my letter dated 29 July 2016 (S/2016/693, annex). In particular, I welcome the unanimous adoption of resolution 2306 (2016) on 6 September 2016 and take note of the amendment adding article 13 quinquies to the statute of the Tribunal.

Article 13 quinquies provides the legal basis for the appointment of an ad hoc judge of the Appeals Chamber. I recall that the number of permanent judges available to sit on any interlocutory appeals in the *Mladić* proceedings is currently insufficient and that all practical solutions have been explored. Furthermore, as previously set out, the accused recently filed before the Trial Chamber several requests for leave to appeal. If the Trial Chamber grants such leave, the accused has a maximum of seven days in which to file an interlocutory appeal. It is therefore crucial that an ad hoc judge be appointed as soon as possible.

In the light of the above, and in accordance with article 13 quinquies, I hereby request the appointment of Judge Burton Hall (Bahamas) to the Appeals Chamber of the Tribunal to allow his immediate assignment to any and all upcoming interlocutory appeals in the *Mladić* case, on an ad hoc and temporary basis.

As required under article 13 quinquies, Judge Hall is a former judge of the Tribunal who is also a judge of the International Residual Mechanism for Criminal Tribunals. In addition, given that he is currently presiding over trial proceedings at the Mechanism, he is now located in The Hague. Furthermore, he has indicated his availability to work on interlocutory appeals in the *Mladić* case, should any arise. In my view, therefore, Judge Hall's appointment would be efficient in terms of both time and cost.

Lastly, I can confirm that I have again consulted the Bureau on this matter and that all judges of the Tribunal are fully apprised of the adoption of article 13 quinquies and of the present request. In addition, I have consulted the President of the Mechanism, who is in agreement with Judge Hall's appointment.

I should be grateful if you would bring the present letter to the attention of the President of the Security Council at your earliest convenience.

(*Signed*) Judge Carmel **Agius**
President